it follows that immediately upon the issuing of the policy the beneficiary has, irrespective of the intentions of the parties, a vested chose in action, which the insured cannot legally destroy by revocation, surrender, assignment, or attempted change of beneficiary. The promise, however, of the insurer is not to pay absolutely to the beneficiary. It is in reality to pay the beneficiary if living at the death of the insured, and, if not, then to pay the insured or any person he may designate. If these conditions are not expressly stated yet it is submitted that according to the clear intention of the parties this is the fair meaning of the words. Whether the desirable results reached by Mr. Robbins may be attained on sound principle at all is open to doubt, but it is submitted that the doctrines of contract offer the fairest ground upon which to base them.

IMPOSSIBILITY OF PERFORMING CONTRACTS AS A DEFENSE. — Impossibility of performance constituted no excuse in the early law for a breach of contract. To this rule three exceptions are now universally admitted. When performance is prevented by a change of law, by the death of one of the parties to a contract for personal service, or by the destruction of the subject matter of the contract, the breach is excused. See 15 HARV. L. REV. 63. These exceptions have been recognized on the ground that the parties impliedly agreed that such contingencies, and such only, should terminate the obligation. There are two objections to accepting this view as final. In the first place the parties generally have performance of the contract alone in mind, and therefore to say that performance was thus conditioned, is pure fiction. See 12 HARV. L. REV. 501. In the second place a number of American courts, rightly feeling that justice would thereby be furthered, have recognized as excuses contingencies which clearly are not covered by these exceptions. *Buffalo, etc., Co.* v. *Bellevue, etc., Co.*, 165 N. Y. 247; *Lovering* v. *Buck Mountain Co.*, 54 Pa. St. 291. Discontented with these old arbitrary exceptions, the courts have been groping for a more liberal rule.

Such a rule has been suggested in a recent article. *Impossibility of Performance as an Excuse for Breach of Contract*, by Frederick C. Woodward. 1 Colum. L. Rev. 529 (Dec., 1901). "If the contingency," Mr. Woodward says, "which makes the contract impossible of performance is such that the parties to the contract, had they actually contemplated it, would probably have regarded it as so obviously terminating the obligation as not to require expression, failure of performance should be excused." The proper inquiry is "Would the parties, had their attention been called to the contingency, have thought it unnecessary to provide for it in the contract? That is not altering or adding to the contract, but merely construing it as already made by the parties." This does not mean that performance is excused by force of an implied condition, which, as above stated, would be purely fictitious. The writer's meaning seems to be that as the plan of the parties may be presumed to have been to make a just contract, and as in justice certain contingencies ought to terminate the obligation, the words by which the parties bind themselves, although apparently absolute in form, may be construed to mean merely that the parties are bound, provided no such contingencies occur. The suggestion is certainly ingenious, but is in truth open to the same objection as the rule of implied conditions. Had the parties carefully considered all the possible contingencies, they would doubtless have agreed that such a contract was just, but their minds were concerned only with the making of a contract which they regarded as certain of performance, and they therefore used words which clearly imposed an absolute obligation, and which have always been regarded in that light at law. To construe them otherwise would be a clear violation of the meaning of words.

The truth of the matter is that the courts of law, recognizing the injustice of enforcing under all circumstances an absolute legal obligation, have interposed in certain cases what must be regarded as an equitable defense. Such a recognition of equitable principles at law is not unprecedented. Thus, a fraudulent vendee, who is in the position of a constructive trustee, has been held liable to

his vendor in trover. 1 HARV. L. REV. 4, note 2. If the courts will recognize this truth they will then be in a position to cast aside arbitrary fictions, and accept a rule working justice in all cases. A proper rule, it is suggested, is that impossibility should be recognized as a defense wherever it seems reasonable that, had the contingency which renders performance impossible been contemplated by the parties, they would have both agreed that its introduction into the contract, as a condition terminating the obligation, would be just.

STATUTORY JURISDICTION OVER CRIMES. — Whatever doubt there may be as to the early common law, it is now well settled that the crime of murder is committed at the place where the fatal blow is struck, irrespective of the place of death. *U. S.* v. *Guiteau*, 1 Mackey (D. of Col.) 498. Numerous statutes have been enacted that if a blow is inflicted without the state and death ensues therefrom within the state, the offence may be punished where such death occurs. Under these statutes, trials resulting in convictions have occurred at the place of death. *Tyler* v. *People*, 8 Mich. 320; *Comm.* v. *Macloon*, 101 Mass. 1. These statutes have recently been assailed as exercising extra-territorial jurisdiction over crimes — attempts in one jurisdiction to punish a crime committed in another. *Responsibility for Crime in Cases where the Criminal Act is Committed in one Jurisdiction and takes Effect in Another*, by Merle I. St. John. 3 Brief 422 (Oct., 1901). The difficulty seems to arise from a misapprehension of the crime that is being punished. It is true that a state cannot inflict punishment when the criminal act has been committed beyond its jurisdiction. Yet whoever causes a prohibited event to happen within a state has clearly made himself amenable to the law of that jurisdiction, regardless of whether he has been physically present or not. *U. S.* v. *Davis*, 2 Sumn. (U. S. Circ. Ct.) 482; *Lindsey* v. *State*, 38 Oh. St. 507. Homicide consists of a physical act and a chain of consequences which finally culminate in death. In the crime of murder the common law selects from this chain the application of the fatal force as the criminal act. But the state may if it wills select any other consequence and enact that whoever causes that consequence to occur within its borders shall be guilty of a crime, and whether it calls that crime murder or by some other name is quite immaterial. It is not the application of the fatal force that is here punished but a consequence thereof happening in a state whose people are injured by and whose laws prohibit such an occurrence. The statutes in question, therefore, create an offense not known perhaps to the common law — the offense of causing death — and this peculiar crime only occurs when the victim dies. Thus two distinct crimes are here committed; one, the common-law crime of murder, punishable only in the jurisdiction where the blow is struck, the other, the statutory offense of causing death, punishable in the state where death occurs.

STUDIES IN AUSTRALIAN CONSTITUTIONAL LAW. By A. Inglis Clark, Judge of the Supreme Court of Tasmania. Melbourne: Charles F. Maxwell. 1901. pp. xvi, 446. 8vo.

This is a book which should interest all students of our own system of constitutional law; and we heartily commend it to them. It gives the text of the Act of the Imperial Parliament which has united under a Federal Constitution those six states which now compose the Commonwealth of Australia, since the first day of the twentieth century; and this is accompanied by an instructive treatise and commentary on its leading provisions. What the author has undertaken is more exactly indicated in the title of his work and in his own words when he says: "The time has not yet arrived for a compre-